

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

RSA No.3559 of 2016 (O & M)
Date of decision :14.09.2017

Sukhchain Singh

...Appellant

Versus

Sat Pal

...Respondent

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Ashok Kumar Khunger, Advocate
for the appellant.

ANIL KSHETARPAL, J. (Oral)

CM No.9322-C of 2016

For the reasons stated in the application, which is duly supported by an affidavit, delay of 1 day in filing the appeal is condoned.

Application is allowed.

Main Case

Defendant is in Regular Second Appeal against the concurrent findings of fact arrived at by the Courts below.

Plaintiff had filed a suit for possession by way of specific performance of agreement to sell dated 03.11.2008 with respect to land measuring 10 kanals. Out of total sale consideration of Rs.4,00,000/-, Rs.2,50,000/- was paid. The target date for execution and registration of the sale deed was initially fixed as 05.01.2009, however, the same was extended to 06.05.2009.

Since defendant did not perform his part of the contract, therefore, a suit was filed. In the written statement, defendant set up a plea that the aforesaid agreement was executed as a collateral security as defendant had borrowed a sum of Rs.1,00,000/-. Defendant further pleaded

that the aforesaid amount has been repaid, but the agreement was not written.

Both the Courts, after appreciating the evidence available on the file, have decreed the suit filed by the plaintiff after recording a finding that agreement to sell and payment of earnest money are proved on the file. The Courts have further recorded a finding of fact that the plaintiff was always ready and willing to perform his part of the contract.

Learned counsel for the appellant has submitted that the appellant is a poor person and the Courts have not appreciated the evidence in proper perspective.

It is not in dispute that the defendants have not led any evidence to establish their case. In this case, defendants had admitted the execution of the agreement, however, a plea was taken that the agreement to sell was executed as a collateral security for the loan. Onus to prove such fact was on the defendant-appellant. Once defendant-appellant has not led any evidence, I do not find that the Courts below have not appreciated the evidence in the proper perspective.

For the reasons recorded above and keeping in view the concurrent findings of fact arrived at by the Courts below, I do not find any good ground to interfere with the judgments of the Courts below.

Hence, this Regular Second Appeal is dismissed.

14.09.2017
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(ANIL KSHETARPAL)
JUDGE

Whether Speaking/reasoned : Yes
Whether Reportable : No